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MAR 25 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Interconnection Between Local	)	CC Docket No. 95-185
Exchange Carriers and Commercial	)	
Mobile Radio Service Providers	)	

REPLY COMMENTS OF SPRINT CORPORATION

SPRINT CORPORATION
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March 25, 1996

TABLE OF CONTENTS

SUMMARY

The Commission should confine this docket to interim prescription of PCS-LEC interconnection arrangements. PCS is likely to have a major impact on the overall CMRS market, but until PCS is up and running, it is impossible to ascertain the cost characteristics, traffic flows and competitive response of cellular service, that must be considered in prescribing long term arrangements. It also makes little sense to consider long term prescriptions until the Commission has undertaken and completed its forthcoming access reform efforts. While interim PCS-LEC interconnection terms should be prescribed, so as to allow PCS entry in a timely fashion and on terms that are fair to LECs and PCS carriers, the record does not permit interim prescriptions for other segments of the CMRS industry. Neither the LECs nor other CMRS carriers currently operating have provided sufficient information about costs and traffic to enable the Commission to override existing tariffed or contractual interconnection arrangements.

The Commission should prescribe bill and keep for interim PCS-LEC interconnection. Since the Commission has no record for setting "cost based" rates for such interconnection, due to the fact that the PCS industry has not yet begun operating, it has only two practical alternatives: using bill and keep, or leaving the PCS industry to the mercy of contractual nego-

tiations with the LECs. The cellular-LEC history proves that the latter course of action will clearly favor LECs and disadvantage PCS carriers. LECs currently extract far more than their costs from cellular carriers and have every reason and incentive to do so from PCS carriers. Whether bill and keep will favor either industry segment cannot be determined at this time. However, because PCS will be in a start-up phase and traffic volumes will be low during the interim period, neither the LECs nor PCS providers will be big winners or big losers if bill and keep is used. Thus, as between two alternatives, one of which is certain to clearly favor one industry segment over the other, and the other of which is unlikely to have any substantial adverse effect on either industry segment, bill and keep is the obvious choice.

Sprint agrees with those parties who argue that the Commission has jurisdiction to prescribe PCS-LEC interconnection arrangements under Section 332 of the Act and that the Telecommunications Act of 1996 does not affect that jurisdiction. Even if the Commission were to consider the principles in Sections 251 and 252 in fashioning PCS-LEC interconnection terms, nothing in those sections precludes mandatory use of bill and keep where it achieves a reasonable reciprocal arrangement.

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Not surprisingly, there is a wide divergence of views among the parties filing comments in this proceeding. The bulk of the broadband wireless industry parties enthusiastically support the Commission's proposed use of bill and keep for CMRS-LEC interconnection for at least an interim period, and possibly as a long term arrangement as well. The RBOCs, at the other extreme, contend that the Commission should not even be involved in CMRS-LEC interconnection arrangements, arguing instead that such arrangements must be left to negotiation between the parties, with state commission supervision if necessary. To the extent that the Commission does intercede, the RBOCs strenuously object to bill and keep, even on an interim basis.

While the positions of many other parties share common elements with that of Sprint, Sprint's overall position is unique. That position is driven by what Sprint believes to be the most important public interest need within the scope of this docket -- to put in place fair and easy-to-administer interim interconnection arrangements between PCS providers and LECs at the outset of PCS service -- and the practical and evidentiary difficulties of attempting to resolve more than that one issue within a reasonable period of time. Accordingly, Sprint urges the Commission to:

- limit this docket to PCS-LEC interconnection arrangements for an interim period that would extend until the Commission completes an access reform docket, and until there is a substantial buildout of PCS facilities;
- prescribe bill and keep for this interim period; and
- leave PCS-IXC interim interconnection arrangements to mutual negotiation.[1]

Sprint believes this proposal is one that will facilitate start-up of the PCS industry on fair terms, will avoid the interconnection arrangements for that industry from becoming mired in the factual record relating to other industry segments, and will moot the RBOCs' principal objections to bill and keep.

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[1] There appears to be widespread agreement on this point, and it is not discussed further in this reply.

I. GENERAL COMMENTS: THIS DOCKET SHOULD BE CONFINED TO INTERIM PCS-LEC ARRANGEMENTS.

As indicated above, Sprint believes that the most pressing need to be addressed in this docket is to establish a fair and easy-to-administer framework for PCS-LEC interconnection as PCS providers begin to enter the market. Sprint also believes it would be fruitless to attempt more than that at this time -- i.e., to prescribe either long-term CMRS-LEC interconnection terms or interim terms for CMRS providers other than PCS providers.

First, it is premature to even begin to develop a record for determining the appropriate long run interconnection arrangements between LECs and PCS providers specifically or the CMRS industry generally. Sprint expects that the introduction of PCS will have a major impact on the CMRS market as a whole: it has made a billion dollar bet on its belief, through its investment in the Sprint Spectrum partnership. Since there is only one PCS carrier operating today (Sprint Spectrum's affiliate, American Personal Communications (APC)) in just one market, it is premature to reach any conclusions about the costs or traffic characteristics of the PCS segment. Furthermore, if other PCS carriers enter the market with innovative service offerings and pricing concepts as APC has, the existing cellular carriers may be forced to change their approach to the market as well. Thus, even if the Commission did have a solid evidentiary record today as to the costs of the LECs and the non-PCS elements of the CMRS industry (which, as will be discussed below, it does not), basing a prescription of long-term interconnection arrangements on such a record would soon be rendered obsolete by the changes in the industry that will result from PCS entry.

Furthermore, there is no serious dispute with Sprint's view that interstate access charges are far above economic costs at the present time. The Commission's interest in access reform and its responsibilities to implement the Telecommunications Act of 1996 will inevitably lead to a new level (and perhaps structure) of access charges. It may be appropriate to harmonize long-term CMRS-LEC interconnection arrangements with the access charge rates and structure that evolve from the Commission's forthcoming access reform efforts. Until such a proceeding has been conducted, however, it makes no sense to attempt to rationalize an outmoded access charge structure with proper long-term interconnection arrangements for CMRS carriers. By the time the Commission's access reform proceeding has been concluded, there also may be a sufficient build-out of the PCS networks -- and sufficient information about the response of the cellular industry to PCS service -- to develop a meaningful record on long-term CMRS-LEC interconnection.

For the interim, the state of the record precludes the Commission from prescribing new arrangements for CMRS services other than PCS. In keeping with the Commission's desired outline for comments and reply comments (Notice, ¶133), Sprint will defer to Section II below why it believes bill and keep is a fair and appropriate interim arrangement for broadband PCS-LEC interconnection. For present purposes, Sprint submits that the Commission could mandate terms (whether bill and keep or some other arrangement) for other CMRS-LEC interconnections only if those terms are reasonably reflective of the costs incurred by each carrier in terminating the other's traffic. However, neither the LEC industry nor the cellular providers and other CMRS providers now operating have provided sufficient detail about the costs of their services as to enable the Commission to make the findings necessary to override existing tariffs or agreements and to prescribe different arrangements instead.[2]

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[2] NYNEX, like Sprint, "does not believe that a sufficient record for pricing can be established with haste in this proceeding." (NYNEX, n.40 at 24.) NYNEX appears to favor using the promised access charge reform proceeding for this purpose (id.), which is consistent with Sprint's view that the Commission should attempt to prescribe long-term interconnection arrangements only after that proceeding has been completed.

Many cellular providers argue -- perhaps with considerable justification -- that notwithstanding the directional imbalance of traffic, bill and keep would be fair for interim cellular-LEC interconnection because of the cellular carriers' higher costs.[3] However, in the absence of hard data on the costs that both cellular carriers and LECs incur in terminating interconnected calls, it is difficult to determine fair and equitable mutual compensation. The status quo may perhaps be unfair to the cellular industry,[4] but without hard facts in the record, the Commission cannot find existing arrangements unlawful and prescribe lawful arrangements.

Circumstances with respect to the PCS industry are quite different and necessarily require some interim action. It is clear from existing LEC-cellular arrangements, as well as APC's interim agreement with Bell Atlantic,[5] that the LECs, with their local bottleneck, hold all the bargaining chips in bilateral negotiations. Nearly all existing LEC-cellular arrangements are one-sided: the LEC pays nothing to cellular carriers for their termination of LEC-originated calls, but the LEC receives compensation from the cellular carrier that

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[3] See e.g., AT&T at 10; CTIA at 23.

[4] Even RBOC-owned Bell Atlantic NYNEX Mobile acknowledges (at 2, 4-6) that cellular carriers have been treated unfairly by LECs.

[5] See APC's Comments at 4-6 and Appendix 1.

is far above the LEC's costs,[6] and much higher than the LEC's effective charge for originating and terminating a local call.[7] There is no reason to saddle the PCS industry with the same inflated interconnection charges at the onset of its operations that the cellular industry now faces.

Yet it is quite clear that if the Commission fails to prescribe fair and reasonable interconnection arrangements for the PCS industry, that is exactly what is likely to happen. SBC, for one, contemplates negotiations between it and CMRS providers "with rate levels to be set above cost..." and states that its charges for terminating CMRS traffic will be higher than what it is prepared to pay to CMRS providers for terminating LEC-originated traffic, in part due to "regulatory price constraints that artificially inflate certain LEC rates... ." SBC Comments at 21.

Pacific Bell asserts that if the LECs attempt to charge unreasonably high interconnection prices, "CMRS providers will seek out interconnection arrangements with other providers."[8]

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[6] The consultants for USTA, for example, estimate that the LECs' cost of terminating cellular-originated calls amount to $.013 per minute, or, in the aggregate, $440 million annually, but point out that the LEC industry receives as much as $1.1 billion annually from CMRS carriers. See Attachment to USTA comments at 10-11.

[7] According to USTA's president, these charges "at a maximum average one to two cents per minute." Roy M. Neal, letter to the editor, Wall Street Journal, March 20, 1996, at A15.

[8] Pacific at 8-9, footnote omitted. In the omitted footnote, Pacific cites paragraphs 11 and 51 of the testimony of Professor Hausman, appended as Exhibit B to its comments. In

The last time we checked, Pacific Bell had a virtual monopoly over local telephone service in its franchise areas. While the California PUC has recently opened the local market to competition, we are not aware of any erosion in Pacific's market share such that a CMRS provider would want to walk away from interconnection with Pacific Bell and instead rely exclusively on interconnections with other local carriers in Pacific's service areas.

The attitude of these two RBOCs -- in effect "let them eat cake and make them pay plenty for it" -- underscores the need for Commission action to get PCS-LEC interconnection off to a proper start if the PCS industry is to fulfill the hopes the Commission has placed in it.

Sprint acknowledges the tension between its position and the Congressional purpose, underlying Section 332 of the Act, to place CMRS providers engaged in similar services on similar footings. However, Sprint believes that its proposed differentiation between cellular carriers and PCS carriers -- for this strictly interim period -- is warranted and perhaps compelled by unique circumstances: (1) the fact that the PCS industry (other than one licensee in one market) is not yet

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the cited paragraphs, however, Professor Hausman simply endorses the concept that interconnection rates should be based on long-run incremental costs and does not in any way endorse Pacific's implicit assumption that there are currently other local carriers that could satisfy a CMRS carrier's needs.

operating, so its costs and traffic characteristics cannot be ascertained; and (2) the fact that the established cellular carriers and LECs have not come forward with sufficient information about their own costs to enable the Commission quickly to prescribe reasonable interconnection terms between those carriers.

In addition, there is no reason why the Commission must treat all CMRS carriers monolithically. Narrowband PCS providers and other existing narrowband CMRS providers such as the paging industry, while not opposing bill and keep for broadband carriers, point out that their traffic is inherently unidirectional -- they always receive traffic from the LECs and send no traffic to the LECs -- and thus warrant different interconnection arrangements than those that may be suitable for the broadband CMRS industry.[9] Accordingly, Sprint believes the short-term differentiation between cellular carriers and PCS carriers it has proposed is fully defensible and is not likely to have a significant adverse effect on the cellular industry during the start-up phase of PCS.

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[9] See e.g., PCIA at 7-12.

II. PROPOSED COMPENSATION FOR INTERCONNECTED TRAFFIC

A. The RBOCs' Principal Criticisms of Bill and Keep Have No Merit When Applied To PCS-LEC Interconnection For An Interim Period

As discussed above, Sprint believes the Commission should confine its prescription of CMRS-LEC interconnection arrangements, at this time, to interim arrangements between broadband PCS providers and LECs, for the period until the Commission has completed its reform of access charges and until there is a reasonably widespread build-out of PCS service.

The Commission is faced with an immediate problem regarding interconnection between PCS providers and LECs in the start-up phase of the PCS industry. It cannot hope to compile a meaningful record on "cost based" rates for LEC-PCS interconnection until the PCS industry has been up and running for a reasonable period of time and both its costs and traffic characteristics can be ascertained with reasonable certitude. Thus, the Commission, as a practical matter, is limited to two options: it can either prescribe bill and keep for the startup period, recognizing that such a plan viewed, after the fact, might prove to have been somewhat disadvantageous to one group of carriers or the other; or the Commission can leave the matter to individual negotiations between monopoly LECs and competitive PCS providers.

Choosing the first option results in an uncertain outcome: depending on costs and traffic characteristics, bill and keep may be overgenerous to either PCS providers or incumbent LECs. However, it is not clear, ab initio, which group (if either) will be unduly favored. In any event, given the fact that the PCS industry will be in a startup phase during this interim period, any ultimate inequity from having used bill and keep during the interim period is unlikely to severely impact either group. If bill and keep proves to have disfavored the LECs, the volume of PCS-originated traffic is unlikely to have a measurable impact on their costs or operations. If, however, bill and keep proves to have disfavored the PCS industry, that industry would at least be freed of any requirement to pay a cash outflow to the LECs at a time when their cash flow is likely to be negative to begin with. It is likely, in short, that neither the LEC industry nor the PCS industry will be big winners or big losers if bill and keep is chosen as the interim solution.

On the other hand, if the Commission adopts the only other practicable alternative -- leaving PCS providers at the mercy of negotiations with monopoly LECs -- the cellular-LEC history teaches that the LEC industry will be the certain winners and the PCS industry will be the certain losers. The

LECs can be expected -- and as discussed above, some of them have a stated intention of doing so -- to extract above cost rates from PCS providers. And the fact that PCS carriers cannot enter the market until they have entered into interconnection agreements with LECs greatly enhances the LECs' leverage. This would inevitably stifle the incentive of PCS providers to engage in the innovative approaches to the market that are so important during the launch phase of a new segment of the industry. Given the choice between two alternatives, one of which is neutral (in that it cannot be foreseen whether it will unduly favor either industry segment), and the other of which clearly will disadvantage the PCS industry and be overly generous to the LEC industry, Sprint believes the proper course of action for the Commission is clear.

The RBOCs have advanced a number of arguments against bill and keep which Sprint believes are either irrelevant in any context or inapposite to the limited use of bill and keep that Sprint is advocating here.

Backed by economic consultants, many RBOCs argue that bill and keep sends the wrong economic signals: it fails to impose the true costs of completing a call on the consumer who is placing the call.[10] While this criticism of bill and keep

[10] See NYNEX at 28, Taylor Affidavit (appended thereto) at ¶¶15-17.

may be economically sound, the same criticism could be leveled at virtually every other pricing mechanism used in telecommunications today. In most markets, residential subscribers do not pay any traffic-sensitive or peak-period-based charges for their local calls. And both the Commission and the '96 Act discourage IXCs from varying prices for interstate calls based on the different levels of access charges that they incur on those calls. Given the economic imperfections in the way other calls are priced, there is no reason to hold interconnected PCS-LEC calls to a higher standard. Furthermore, during this interim period, bill and keep may be the best surrogate for cost-based interconnection.

The RBOCs similarly claim that bill and keep produces distorted investment signals to carriers, since they can use another carrier's network for "free."[11] However, if bill and keep is explicitly adopted as a short-term interim arrangement, it is unlikely that its use would distort any investment decisions of either LECs or PCS providers.[12]

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[11] See NYNEX at 28, Taylor Aff., ¶¶13-14; Bell Atlantic, Statement of Robert W. Crandall at 9; Pacific Bell, Exh. B at 7-9; and Ameritech, Attach. B at 20.

[12] Requiring, as Sprint and other bill and keep proponents have proposed, bill and keep to apply to "transport" functions, with the cost of the interconnection facility shared equally, creates an incentive for each carrier to handle interconnected traffic efficiently within its own network and avoids saddling the other carrier with the costs of inefficient networking or routing.

The RBOCs also argue that bill and keep is unfair because it would deprive them of the recovery of the costs they now incur for termination of cellular traffic and the above cost contribution from that traffic that allegedly helps support universal service.[13] The Commission does not need to reach the merits of that argument if bill and keep is limited to PCS traffic. First, LECs receive no revenues from such traffic today (except for the de minimis revenues Bell Atlantic receives from APC), and thus have no revenues at risk. Second, the traffic volume from PCS is unlikely to be of a magnitude that, even if it is assumed that the net balance of traffic and relative costs would otherwise require net payments to the LECs, the costs incremental to the handling of PCS traffic would be significant. Finally, under the recently enacted Section 254, universal service needs can no longer be used to justify above-cost access charges: universal service subsidies must be explicit, targeted, and shared by all telecommunications providers.

Some LECs also challenge the use of bill and keep for CMRS-LEC interconnection because cellular-LEC traffic is directionally imbalanced today, and they claim that this imbalance is likely to endure even after PCS is introduced.[14]

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[13] See e.g., Pacific Bell at 17-18; USTA, Attach. at 11; and US West at 26.

[14] See GTE at 20-21; and Pacific Bell at 13.

However, there are indications that PCS-LEC traffic may have markedly different characteristics than cellular-LEC traffic. The early results of APC's operations in the Baltimore-Washington area show much closer to a 50:50 balance of traffic than has been the case with cellular traffic.[15] Moreover, even if this pattern changes, the soundness of bill and keep does not depend on equal traffic flows. Unequal flows may be counterbalanced by unequal termination costs. The PCS providers' cost of terminating LEC-originated traffic may prove to be far greater on either a per-call or per minute basis than the LECs' unit costs.[16] If, for example, the PCS providers' termination costs, on a per-unit basis, were nine times that of the LECs, bill and keep would be a net benefit to the LECs unless the traffic imbalance was such that more than 90% of the interconnected traffic terminated on the LEC's networks and less than 10% terminated on the PCS providers' networks.

Many LECs argue that the existing interconnection arrangements for cellular service obviously have not impaired the cellular industry, since it has grown so fast, and presumably they are likely to argue that the same will be true

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[15] See APC Comments at 9-10.

[16] While some parties argue that CMRS providers should not be permitted to charge a higher rate for terminating LEC-originated traffic than the LECs receive for CMRS-originated traffic, they offer no reasoned basis for putting such a ceiling on the CMRS providers' cost recovery.

for PCS. This begs the question, and only proves the tyranny of small numbers: any industry that starts off with a volume base of zero will grow very rapidly in percentage terms. However, it is undoubtedly true that having to pay above-cost charges for call termination would necessarily inflate the PCS carriers' costs unnecessarily and depress their growth.

It is also claimed that employing bill and keep would give CMRS providers an artificial incentive to concentrate on customers who originate a large volume of calls but receive few calls.[17] This supposed "vice" of bill and keep could also be viewed as a virtue: bill and keep creates an incentive for carriers to make money by bringing customers on their network and pricing services in a fashion that makes usage of their network attractive, rather than living off the efforts of interconnecting carriers by collecting revenues merely as a bottleneck gatekeeper on the terminating end of the call. Indeed, if carriers receive too much compensation for terminating calls, they will have an equally artificial incentive to seek out customers who originate far fewer calls than they receive. If each carrier tries to "beat the system" by maximizing its own customers' traffic, there should be a net gain for consumers as a whole: they will benefit by

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[17] See e.g., Bell Atlantic, Crandall Statement at 8-9; Ameritech, Attach. B at 13; and USTA, Attach. at 5-7.

innovative marketing and rate plans that encourage, rather than discourage, use of the network.

B. Jurisdiction

Sprint indicated in its initial comments, without elaborate discussion, that it believed that the Commission had jurisdiction under Section 332 to prescribe CMRS-LEC interconnection arrangements and urged it to exercise that power, in order to avoid the burden of fighting these battles in 50 different jurisdictions. Sprint also pointed out that nothing in the Telecommunications Act of 1996 amended the powers previously given to the Commission under Section 332. While the RBOCs have argued at length that the Commission has essentially been stripped of jurisdiction by the '96 Act and that the matter must be left up to individual negotiations and state commission review, Sprint believes that the arguments set forth by the wireless industry are far more persuasive. Sprint respectfully refers to the Commission to the ex parte memorandum submitted by Cox Enterprises, Inc. on February 28, 1996, comments of CTIA at 58-82, comments of PCIA at 15-27, comments of AT&T at 19-30.

However, if the Commission believes that the principles embodied in Sections 251 and 252 should be considered in prescribing interconnection between the PCS and LEC industries, Sprint does wish to respond briefly to the assertion of the RBOCs that the Commission is precluded from prescribing bill and keep as a reciprocal compensation method because under Section 252(d)(2)(B)(i) bill and keep can only be adopted voluntarily by carriers as a means of waiving mutual recovery of costs.[18] The fact that this provision specifically allows bill and keep as an option does not preclude any commission from mandating bill and keep when bill and keep achieves a reasonable reciprocal arrangement. This can occur, for instance, when traffic flows and costs are equal, or when traffic imbalances are offset by cost imbalances. In such situations, there is no bar to prescription of bill and keep, thereby avoiding the costly creation of measuring and billing systems that would otherwise be needed. The Commission, in other words, is empowered by the new law to promote technology and competition, and in particular, it is not rendered subservient to voluntary conduct by incumbent LECs.

Respectfully submitted,

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[18] See e.g., Bell Atlantic/Pacific ex parte letter dated February 26, 1996, at 5-6.

CERTIFICATE OF SERVICE

I, Joan A. Hesler, hereby certify that on this 25th day of March, 1996, a true copy of the foregoing **REPLY COMMENTS OF SPRINT** was mailed via First-Class Mail, Postage Prepaid or hand delivered to the below-listed parties:

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